

Introduced by Senator Kuehl

January 27, 2004

An act to amend Section 707 of the Welfare and Institutions Code, relating to juvenile crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1151, as amended, Kuehl. Juvenile crime.

Existing law ~~provides that the commission of specified offenses by a minor 14 years of age or older raises a presumption that the minor is not a fit and proper subject to be dealt with juvenile court law, unless the juvenile court concludes that the minor would be amenable to juvenile court treatment based upon evaluation of specified criteria. One of the criteria listed is the circumstances and gravity of the offenses establishes the criteria by which the juvenile court may find that specified minors, including a person who has committed one of specified violent offenses when he or she was 16 years of age or older, 2 or more felony offenses under certain circumstances, or specified violent offenses at 14 years of age or older, are unfit for treatment in juvenile court.~~

This bill would specify that the criterion for evaluating the circumstances and gravity of the offense includes the actual alleged behavior of the minor, the minor's degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter ~~which~~ *that* may affect the circumstances and gravity of the offenses.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in *subdivision (a) of* Section 602-~~(a)~~ by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence~~which~~ *that* the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

~~(1)~~

(A) The degree of criminal sophistication exhibited by the minor.

~~(2)~~

(B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

~~(3)~~

(C) The minor's previous delinquent history.

~~(4)~~

(D) Success of previous attempts by the juvenile court to rehabilitate the minor.

~~(5)~~

(E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. *This includes the actual alleged behavior of the minor; the minor's degree of involvement in the crime, the level of harm actually caused by the minor; and any other matter that may affect the circumstances and gravity of the offenses.*

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one

or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea ~~which~~ *that* may already have been entered shall constitute evidence at the hearing.

(2) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained the age of 16 years, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:

(A) The minor has previously been found to have committed two or more felony offenses.

(B) The offenses upon which the prior petition or petitions were based were committed when the minor had attained the age of 14 years.

Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court; based upon an evaluation of the following criteria:

~~(A)–~~

(i) The degree of criminal sophistication exhibited by the minor.

~~(B)–~~

(ii) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

~~(C)–~~

(iii) The minor's previous delinquent history.

~~(D)–~~

1 (iv) Success of previous attempts by the juvenile court to
2 rehabilitate the minor.

3 ~~(E)~~

4 (v) The circumstances and gravity of the offense alleged in the
5 petition to have been committed by the minor. *This includes the*
6 *actual alleged behavior of the minor; the minor's degree of*
7 *involvement in the crime, the level of harm actually caused by the*
8 *minor; and any other matter that may affect the circumstances and*
9 *gravity of the offenses.*

10 A determination that the minor is a fit and proper subject to be
11 dealt with under the juvenile court law shall be based on a finding
12 of amenability after consideration of the criteria set forth above,
13 and findings therefor recited in the order as to each of the above
14 criteria that the minor is fit and proper under each and every one
15 of the above criteria. In making a finding of fitness, the court may
16 consider extenuating and mitigating circumstances in evaluating
17 each of the above criteria. In any case in which the hearing has been
18 noticed pursuant to this section, the court shall postpone the taking
19 of a plea to the petition until the conclusion of the fitness hearing
20 and no plea which may already have been entered shall constitute
21 evidence at the hearing. If the minor is found to be a fit and proper
22 subject to be dealt with under the juvenile court law pursuant to this
23 subdivision, the minor shall be committed to placement in a
24 juvenile hall, ranch camp, forestry camp, boot camp, or secure
25 juvenile home pursuant to Section 730, or in any institution
26 operated by the Youth Authority.

27 (3) If, pursuant to this subdivision, the minor is found to be not
28 a fit and proper subject for juvenile court treatment and is tried in
29 a court of criminal jurisdiction and found guilty by the trier of fact,
30 the judge may commit the minor to the Youth Authority in lieu of
31 sentencing the minor to the state prison, unless the limitations
32 specified in Section 1732.6 apply.

33 (b) Subdivision (c) shall be applicable in any case in which a
34 minor is alleged to be a person described in Section 602 by reason
35 of the violation, when he or she was 16 years of age or older, of one
36 of the following offenses:

37 (1) Murder.

38 (2) Arson, as provided in subdivision (a) or (b) of Section 451
39 of the Penal Code.

40 (3) Robbery.

- 1 (4) Rape with force or violence or threat of great bodily harm.
- 2 (5) Sodomy by force, violence, duress, menace, or threat of
- 3 great bodily harm.
- 4 (6) Lewd or lascivious act as provided in subdivision (b) of
- 5 Section 288 of the Penal Code.
- 6 (7) Oral copulation by force, violence, duress, menace, or
- 7 threat of great bodily harm.
- 8 (8) Any offense specified in subdivision (a) of Section 289 of
- 9 the Penal Code.
- 10 (9) Kidnapping for ransom.
- 11 (10) Kidnapping for purpose of robbery.
- 12 (11) Kidnapping with bodily harm.
- 13 (12) Attempted murder.
- 14 (13) Assault with a firearm or destructive device.
- 15 (14) Assault by any means of force likely to produce great
- 16 bodily injury.
- 17 (15) Discharge of a firearm into an inhabited or occupied
- 18 building.
- 19 (16) Any offense described in Section 1203.09 of the Penal
- 20 Code.
- 21 (17) Any offense described in Section 12022.5 or 12022.53 of
- 22 the Penal Code.
- 23 (18) Any felony offense in which the minor personally used a
- 24 weapon listed in subdivision (a) of Section 12020 of the Penal
- 25 Code.
- 26 (19) Any felony offense described in Section 136.1 or 137 of
- 27 the Penal Code.
- 28 (20) Manufacturing, compounding, or selling one-half ounce
- 29 or more of any salt or solution of a controlled substance specified
- 30 in subdivision (e) of Section 11055 of the Health and Safety Code.
- 31 (21) Any violent felony, as defined in subdivision (c) of
- 32 Section 667.5 of the Penal Code, which would also constitute a
- 33 felony violation of subdivision (b) of Section 186.22 of the Penal
- 34 Code.
- 35 (22) Escape, by the use of force or violence, from any county
- 36 juvenile hall, home, ranch, camp, or forestry camp in violation of
- 37 subdivision (b) of Section 871 where great bodily injury is
- 38 intentionally inflicted upon an employee of the juvenile facility
- 39 during the commission of the escape.

1 (23) Torture, as described in Sections 206 and 206.1 of the
2 Penal Code.

3 (24) Aggravated mayhem, as described in Section 205 of the
4 Penal Code.

5 (25) Carjacking, as described in Section 215 of the Penal Code,
6 while armed with a dangerous or deadly weapon.

7 (26) Kidnapping, as punishable in subdivision (d) of Section
8 208 of the Penal Code.

9 (27) Kidnapping, as punishable in Section 209.5 of the Penal
10 Code.

11 (28) The offense described in subdivision (c) of Section 12034
12 of the Penal Code.

13 (29) The offense described in Section 12308 of the Penal Code.

14 (30) Voluntary manslaughter, as described in subdivision (a) of
15 Section 192 of the Penal Code.

16 (c) With regard to a minor alleged to be a person described in
17 Section 602 by reason of the violation, when he or she was 14 years
18 of age or older, of any of the offenses listed in subdivision (b), upon
19 motion of the petitioner made prior to the attachment of jeopardy
20 the court shall cause the probation officer to investigate and submit
21 a report on the behavioral patterns and social history of the minor
22 being considered for a determination of unfitness. Following
23 submission and consideration of the report, and of any other
24 relevant evidence ~~which~~ *that* the petitioner or the minor may wish
25 to submit the minor shall be presumed to be not a fit and proper
26 subject to be dealt with under the juvenile court law unless the
27 juvenile court concludes, based upon evidence, which evidence
28 may be of extenuating or mitigating circumstances, that the minor
29 would be amenable to the care, treatment, and training program
30 available through the facilities of the juvenile court based upon an
31 evaluation of each of the following criteria:

32 (1) The degree of criminal sophistication exhibited by the
33 minor.

34 (2) Whether the minor can be rehabilitated prior to the
35 expiration of the juvenile court's jurisdiction.

36 (3) The minor's previous delinquent history.

37 (4) Success of previous attempts by the juvenile court to
38 rehabilitate the minor.

39 (5) The circumstances and gravity of the offenses alleged in the
40 petition to have been committed by the minor. This includes the



1 actual alleged behavior of the minor, the minor's degree of
2 involvement in the crime, the level of harm actually caused by the
3 minor, and any other matter—~~which~~ *that* may affect the
4 circumstances and gravity of the offenses.

5 A determination that the minor is a fit and proper subject to be
6 dealt with under the juvenile court law shall be based on a finding
7 of amenability after consideration of the criteria set forth above,
8 and findings therefor recited in the order as to each of the above
9 criteria that the minor is fit and proper under each and every one
10 of the above criteria. In making a finding of fitness, the court may
11 consider extenuating or mitigating circumstances in evaluating
12 each of the above criteria. In any case in which a hearing has been
13 noticed pursuant to this section, the court shall postpone the taking
14 of a plea to the petition until the conclusion of the fitness hearing
15 and no plea which may already have been entered shall constitute
16 evidence at the hearing. If, pursuant to this subdivision, the minor
17 is found to be not a fit and proper subject for juvenile court
18 treatment and is tried in a court of criminal jurisdiction and found
19 guilty by the trier of fact, the judge may commit the minor to the
20 Youth Authority in lieu of sentencing the minor to the state prison,
21 unless the limitations specified in Section 1732.6 apply.

22 (d) (1) Except as provided in subdivision (b) of Section 602,
23 the district attorney or other appropriate prosecuting officer may
24 file an accusatory pleading in a court of criminal jurisdiction
25 against any minor 16 years of age or older who is accused of
26 committing an offense enumerated in subdivision (b).

27 (2) Except as provided in subdivision (b) of Section 602, the
28 district attorney or other appropriate prosecuting officer may file
29 an accusatory pleading against a minor 14 years of age or older in
30 a court of criminal jurisdiction in any case in which any one or
31 more of the following circumstances apply:

32 (A) The minor is alleged to have committed an offense which
33 if committed by an adult would be punishable by death or
34 imprisonment in the state prison for life.

35 (B) The minor is alleged to have personally used a firearm
36 during the commission or attempted commission of a felony, as
37 described in Section 12022.5 of the Penal Code.

38 (C) The minor is alleged to have committed an offense listed in
39 subdivision (b) in which any one or more of the following
40 circumstances apply:

1 (i) The minor has previously been found to be a person
2 described in Section 602 by reason of the commission of an offense
3 listed in subdivision (b).

4 (ii) The offense was committed for the benefit of, at the
5 direction of, or in association with any criminal street gang, as
6 defined in subdivision (f) of Section 186.22 of the Penal Code,
7 with the specific intent to promote, further, or assist in any criminal
8 conduct by gang members.

9 (iii) The offense was committed for the purpose of intimidating
10 or interfering with any other person's free exercise or enjoyment
11 of any right secured to him or her by the Constitution or laws of
12 this state or by the Constitution or laws of the United States and
13 because of the other person's race, color, religion, ancestry,
14 national origin, disability, gender, or sexual orientation, or because
15 the minor perceives that the other person has one or more of those
16 characteristics, as described in Title 11.6 (commencing with
17 Section 422.6) of Part 1 of the Penal Code.

18 (iv) The victim of the offense was 65 years of age or older, or
19 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
20 or confined to a wheelchair, and that disability was known or
21 reasonably should have been known to the minor at the time of the
22 commission of the offense.

23 (3) Except as provided in subdivision (b) of Section 602, the
24 district attorney or other appropriate prosecuting officer may file
25 an accusatory pleading in a court of criminal jurisdiction against
26 any minor 16 years of age or older who is accused of committing
27 one of the following offenses, if the minor has previously been
28 found to be a person described in Section 602 by reason of the
29 violation of any felony offense, when he or she was 14 years of age
30 or older:

31 (A) Any felony offense in which it is alleged that the victim of
32 the offense was 65 years of age or older, or blind, deaf,
33 quadriplegic, paraplegic, developmentally disabled, or confined
34 to a wheelchair, and that disability was known or reasonably
35 should have been known to the minor at the time of the commission
36 of the offense;

37 (B) Any felony offense committed for the purposes of
38 intimidating or interfering with any other person's free exercise or
39 enjoyment of any right secured to him or her by the Constitution
40 or laws of this state or by the Constitution or laws of the United



1 States and because of the other person's race, color, religion,
2 ancestry, national origin, disability, gender, or sexual orientation,
3 or because the minor perceived that the other person had one or
4 more of those characteristics, as described in Title 11.6
5 (commencing with Section 422.6) of Part 1 of the Penal Code; or

6 (C) The offense was committed for the benefit of, at the
7 direction of, or in association with any criminal street gang as
8 prohibited by Section 186.22 of the Penal Code.

9 (4) In any case in which the district attorney or other
10 appropriate prosecuting officer has filed an accusatory pleading
11 against a minor in a court of criminal jurisdiction pursuant to the
12 provisions of this subdivision, the case shall then proceed
13 according to the laws applicable to a criminal case. In conjunction
14 with the preliminary hearing as provided for in Section 738 of the
15 Penal Code, the magistrate shall make a finding that reasonable
16 cause exists to believe that the minor comes within the provisions
17 of this subdivision. If reasonable cause is not established, the
18 criminal court shall transfer the case to the juvenile court having
19 jurisdiction over the matter.

20 (5) For any offense for which the prosecutor may file the
21 accusatory pleading in a court of criminal jurisdiction pursuant to
22 this subdivision, but elects instead to file a petition in the juvenile
23 court, if the minor is subsequently found to be a person described
24 in subdivision (a) of Section 602, the minor shall be committed to
25 placement in a juvenile hall, ranch camp, forestry camp, boot
26 camp, or secure juvenile home pursuant to Section 730, or in any
27 institution operated by the Youth Authority.

28 (6) If, pursuant to this subdivision, the minor is found to be not
29 a fit and proper subject for juvenile court treatment and is tried in
30 a court of criminal jurisdiction and found guilty by the trier of fact,
31 the judge may commit the minor to the Youth Authority in lieu of
32 sentencing the minor to the state prison, unless the limitations
33 specified in Section 1732.6 apply.

34 (e) Any report submitted by a probation officer pursuant to this
35 section regarding the behavioral patterns and social history of the
36 minor being considered for a determination of unfitness shall
37 include any written or oral statement offered by the victim, the
38 victim's parent or guardian if the victim is a minor, or if the victim
39 has died, the victim's next of kin, as authorized by subdivision (b)
40 of Section 656.2. Victims' statements shall be considered by the

- 1 court to the extent they are relevant to the court's determination of
- 2 unfitness.

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